

From: Paul Cassell <[REDACTED]>
To: Jackie Perczek <[REDACTED]>
Cc: "[REDACTED], [REDACTED] (USAFLS)" <[REDACTED]>, "[REDACTED], [REDACTED] [REDACTED] (USAFLS)" <[REDACTED]>, "Brad Edwards ([REDACTED])" <[REDACTED]>

Subject: RE: Position on Motion to Treat MTD as Equivalent to Jurisdictional Question

Date: Tue, 06 Aug 2013 18:11:02 +0000

Importance: Normal

[REDACTED] – What is the Government’s view on all this?

Brad Edwards and Paul Cassell for Jane Doe No. 1 and Jane Doe No. 2

Paul G. Cassell
Ronald N. Boyce Presidential Professor of Criminal Law
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You can access my publications on <http://ssrn.com/author=30160>

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From: Jackie Perczek [mailto:[REDACTED]]
Sent: Tuesday, August 06, 2013 11:56 AM
To: Paul Cassell
Cc: [REDACTED], [REDACTED] (USAFLS); [REDACTED], [REDACTED] [REDACTED] (USAFLS); Brad Edwards ([REDACTED])
Subject: RE: Position on Motion to Treat MTD as Equivalent to Jurisdictional Question

Paul, the problem with the alternative that you propose is that the jurisdictional issue and the merits issues overlap. You argue as to jurisdiction that Perlman does not apply because there is no privilege. And our argument on the merits is that there is a privilege. So privilege is at the heart of the jurisdictional question you raise, and at the heart of the merits. They cannot be separated. The Court needs to look at our merits arguments on privilege to determine the jurisdiction issue. For this reason, we believe that the Court should address both issues without bifurcation.

From: Paul Cassell [mailto:[REDACTED]]
Sent: Tuesday, August 06, 2013 11:20 AM
To: Jackie Perczek
Cc: [REDACTED], [REDACTED] (USAFLS); [REDACTED], [REDACTED] [REDACTED] (USAFLS); Brad Edwards ([REDACTED])
Subject: RE: Position on Motion to Treat MTD as Equivalent to Jurisdictional Question

Hi Jackie,

Thanks for getting back to us so quickly. We have always appreciated your collegiality on these issues as well (and we know that your firm has quite an effective team put together).

We’ve been wondering about the need for the filing of our brief while a contested (and, in our view, meritorious) jurisdictional issue is before the Court. In looking more carefully at the CA11 Local Rules, we notice that under the Rule 31-21(d), if the Court were to issue a jurisdictional question, that would stay the time for filing our brief for 30 days until

the Court rules on jurisdiction. What would your position be if we restyled our motion along the lines of – Motion to Treat Victims’ Motion to Dismiss and Subsequent Briefing as Equivalent to Issuance of a Jurisdictional Question For Purposes of Briefing Schedule – i.e., our brief would not be due until 30 days after a court ruling on jurisdiction. That way, your brief would still be in and counted – does that resolve your concern? And [REDACTED], what is your position on all this? (Or can you provide the name and e-mail of the attorney handling the appellate issues?) I’m assuming that the Government does not want to have a brief due while the jurisdictional issue is pending.

Brad Edwards and Paul Cassell for Jane Doe No. 1 and Jane Doe No. 2

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From: Jackie Perczek [[mailto:\[REDACTED\]](mailto:[REDACTED])]
Sent: Tuesday, August 06, 2013 8:03 AM
To: Paul Cassell
Cc: [REDACTED], [REDACTED] (USAFLS); [REDACTED], [REDACTED] [REDACTED] (USAFLS); Brad Edwards ([REDACTED])
Subject: Re: Position on Motion for Expedited Ruling on Motion to Dismiss

He actually takes very good care of me! The truth is that you've always been very prompt and cordial with me and I wanted to do the same for you. I know this is important to you so I wanted you to know we were looking at it and would respond quickly. Here's our position, please would you quote it in both of your papers: We object to the Court considering the motion for a stay and the motion to dismiss without also considering the merits of the appeal. We filed our merits brief early, two weeks before it was due, to facilitate the court's consideration of the substantive issues in an expedited basis. We do not object to the court ordering expedited briefing on the remaining briefs (response brief and reply brief) and an expedited oral argument schedule.

-- Jackie

On Aug 6, 2013, at 8:52 AM, "Paul Cassell" <[\[REDACTED\]](mailto:[REDACTED])> wrote:

Hi Jackie -- Thanks! (And I hope Roy is paying you double overtime for answering case-related emails at 1 AM in the morning!). Paul

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[REDACTED] (phone)
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From: Jackie Perczek [REDACTED]

Sent: Monday, August 05, 2013 11:08 PM

To: Paul Cassell

Cc: [REDACTED], [REDACTED] (USAFLS); [REDACTED], [REDACTED] [REDACTED] (USAFLS); Brad Edwards ([REDACTED])

Subject: Re: Position on Motion for Expedited Ruling on Motion to Dismiss

Hi Paul. I will have an answer for you tomorrow morning.

-- Jackie

On Aug 5, 2013, at 6:43 PM, "Paul Cassell" <[REDACTED]> wrote:

Hi all,

Thanks in advance for promptly providing your position on the attached motion we are working on .

Brad Edwards and Paul Cassell for Jane Doe No. 1 and Jane Doe No. 2

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<motion-expedited-ruling-on MTD.doc>